

**(c) Relation Back of Amendments.**

**(1) *When an Amendment Relates Back.*** An amendment to a pleading relates back to the date of the original pleading when:

- (A)** the law that provides the applicable statute of limitations allows relation back;
- (B)** the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or
- (C)** the amendment changes the party or the naming of the party against whom a claim is asserted, if RCFC 15(c)(1)(B) is satisfied and if the party to be brought in by amendment:
  - (i)** received such notice of the action that it will not be prejudiced in defending on the merits; and
  - (ii)** knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

**(2) *Notice to the United States.*** [Not Used.]

**(d) Supplemental Pleadings.** On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, Jan. 11, 2010, July 15, 2011.)

**Rules Committee Notes**

**2002 Revision**

Significant changes were made to FRCP 15 in

1991; minor changes were made in 1993. Most notable is the listing of criteria for relation back of amendments in subdivision (c). RCFC 15 was conformed to the comparable FRCP, with two exceptions: first, the language in FRCP subdivision (c)(3), relating to the timing of an amendment changing the name of a party, was omitted as inapplicable; and second, language in subdivision (c) of the FRCP, relating to faulty service on federal officers, also was omitted.

**2008 Amendment**

The language of RCFC 15 has been amended to conform to the general restyling of the FRCP.

**2010 Amendment**

RCFC 15(a) has been amended in accordance with the corresponding changes to FRCP 15(a) that became effective December 1, 2009.

**2011 Amendment**

RCFC 15(a)(1)(A) has been amended to clarify that the 21-day time period runs from the date of service of the pleading.

**Rule 16. Pretrial Conferences; Scheduling; Management**

**(a) Purposes of a Pretrial Conference.** In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

- (1)** expediting disposition of the action;
- (2)** establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3)** discouraging wasteful pretrial activities;
- (4)** improving the quality of the trial through more thorough preparation;
- (5)** facilitating settlement; and
- (6)** assessing the utility of dispositive motions.

**(b) Scheduling.**

**(1) *Scheduling Order.*** The court will issue a scheduling order:

- (A)** after receiving the parties' Joint

Preliminary Status Report under Appendix A ¶ 3; or

- (B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means.
- (2) **Time to Issue.** The court will issue the scheduling order as soon as practicable after the filing of the Joint Preliminary Status Report, but in any event within 14 days after any preliminary scheduling conference.
- (3) **Contents of the Order.**
  - (A) **Required Contents.** The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.
  - (B) **Permitted Contents.** The scheduling order may:
    - (i) modify the timing of disclosures under RCFC 26(a) and 26(e)(1);
    - (ii) modify the extent of discovery;
    - (iii) provide for disclosure or discovery of electronically stored information;
    - (iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;
    - (v) set dates for pretrial conferences and for trial;
    - (vi) direct that the parties file any of the submissions set out in Appendix A ¶¶ 14, 15, 16, or 17; and
    - (vii) include other appropriate matters.
  - (4) **Modifying a Schedule.** A schedule may be modified only for good cause and with the judge's consent.
- (c) **Attendance and Matters for Consideration**

**at a Pretrial Conference.**

- (1) **Attendance.** A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.
- (2) **Matters for Consideration.** At any pretrial conference, the court may consider and take appropriate action on the following matters:
  - (A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;
  - (B) amending the pleadings if necessary or desirable;
  - (C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;
  - (D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Federal Rule of Evidence 702;
  - (E) determining the appropriateness and timing of summary adjudication under RCFC 52.1 and 56;
  - (F) controlling and scheduling discovery, including orders affecting disclosures and discovery under RCFC 26 and RCFC 29 through 37;
  - (G) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;
  - (H) referring matters to a master;
  - (I) settling the case and using special procedures to assist in resolving the dispute;

- (J) determining the form and content of the pretrial order;
  - (K) disposing of pending motions;
  - (L) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
  - (M) ordering a separate trial under RCFC 42(b) of a claim, counterclaim, third-party claim, or particular issue;
  - (N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law or a judgment on partial findings under RCFC 52(c);
  - (O) establishing a reasonable time limit on the time allowed to present evidence; and
  - (P) facilitating in other ways the just, speedy, and inexpensive disposition of the action.
- (d) **Pretrial Orders.** After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.
- (e) **Final Pretrial Conference and Orders.** The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.
- (f) **Sanctions.**
- (1) **In General.** On motion or on its own, the court may issue any just orders, including those authorized by RCFC

37(b)(2)(A)(ii)–(vii), if a party or its attorney:

- (A) fails to appear at a scheduling or other pretrial conference;
- (B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or
- (C) fails to obey a scheduling or other pretrial order.

(2) **Imposing Fees and Costs.** Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses—including attorney’s fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

(g) **Additional Pretrial Procedures.** See Appendix A to these rules (“Case Management Procedure”) for additional provisions controlling pretrial procedures.

(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008.)

## **Rules Committee Notes**

### **2002 Revision**

RCFC 16 has been completely revised to parallel the structure and content of its counterpart in the FRCP. The limited number of changes to the current FRCP reflect those deemed necessary to accommodate procedural requirements particular to this court. Except for these changes, the rule shown conforms fully to the text of FRCP 16.

### **2007 Amendment**

Subdivision (b) of RCFC 16 has been amended by the addition of subparagraphs 5 and 6 to reflect the corresponding changes to FRCP 16

### **2008 Amendment**

The language of RCFC 16 has been amended to conform to the general restyling of the FRCP.

In addition, reference to RCFC 26(e)(1)

(“Supplementing Disclosures and Responses”) was added to RCFC 16(b)(3)(B)(i) to conform to the FRCP.